



MICHAEL A. CARDOZO
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

MAURICE L. HUDSON
Special Federal Litigation Division
(212) 788-1041
fax: (212) 788-9776
mHUDSON@law.nyc.gov

June 18, 2008

BY FAX: (212) 805-7928

The Honorable Michael H. Dolinger
United States Magistrate Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007

ENDORSED
ORDER

Application granted.
The deposition, as appropriate
court order, is to be taken
no later than
July 11, 2008.

Re: Andrew Pinckney v. Herts #18147, et al. 07-CV-11310 (CM) (MHD)

Your Honor:

I am an attorney in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, assigned to the defense of the above-referenced federal civil rights lawsuit. I write to respectfully join in plaintiff's request to extend until July 11, 2008, the deadline within which to take plaintiff's deposition. The reason for this request is set forth below.

By way of background, plaintiff, who is incarcerated and proceeding *pro se*, alleges in his complaint that on March 26, 2007, he was assaulted by three correction officers at Rikers Island and rendered unconscious. On April 2, 2008, defendants answered the complaint and made a bare motion for summary judgment on the issue of qualified immunity pursuant to Judge Colleen McMahon's Individual Rules. Judge McMahon held a status conference by telephone on May 2, 2008, and ordered that plaintiff's deposition be taken by May 20, 2008. On May 5, 2008, Judge McMahon endorsed defendants' proposed Order permitting plaintiff's deposition to be taken via videoconference,¹ and on May 14, 2008, Judge McMahon granted defendants' first request for an extension until May 30, 2008, within which to conduct the deposition. On May 16, 2008, Judge McMahon denied plaintiff's first request for an adjournment of the deposition due to his mental state.²

¹ Plaintiff was and remains incarcerated at Washington Correctional Facility in Comstock, New York, which is over 200 miles away from New York City.

² For the Court's convenience, a copy of plaintiff's May 7, 2008, letter to Judge McMahon is attached hereto.

On the morning of May 23, 2008, defendants began plaintiff's deposition via videoconference from the Southern District courthouse. The deposition was plagued with technical problems and had to be adjourned when the video connection could not be maintained. More importantly, however, plaintiff did not appear to be fully mentally competent and exhibited significant difficulty speaking clearly and remembering basic facts, such as how tall he is. For these reasons, on May 23, 2008, I wrote to Judge McMahon requesting a stay in the litigation or, in the alternative, a brief extension of time to complete the deposition in order to allow time for plaintiff's mental condition to stabilize. On May 30, 2008, Judge McMahon referred the case to Your Honor "for the purpose of completing [plaintiff's] deposition," and on June 4, 2008, Your Honor ordered defendants to make any submissions with respect to resuming plaintiff's deposition within two weeks.

On June 9, 2008, plaintiff wrote to Judge McMahon requesting "a six weeks [sic] extension from May 30, 2008 so that we may get a better resorts [sic]".³ In his letter, plaintiff indicated that the problems he was experiencing with memory, speech and concentration might be side effects of his prior medication, and that he started a new medication on May 30, 2008.

In light of plaintiff's representations to the Court as set forth in his letter of June 9, 2008, it is our position that plaintiff's difficulties in providing testimony on May 23, 2008 are likely the result of side effects of psychotropic medications he was taking and not the result of permanent impairments. Accordingly, we respectfully submit that it will be beneficial to all parties if the Court permits time for plaintiff's mental state to stabilize before defense counsel resumes plaintiff's deposition. Therefore, defendants respectfully join in plaintiff's request that Your Honor extend the time within which plaintiff's deposition must be completed until July 11, 2008. Should Your Honor grant the within request, defendants will timely submit an appropriate proposed order for the Court's endorsement so that arrangements can be made to have plaintiff moved to another correctional facility for the purpose of continuing the deposition, and defendants will thereafter make the necessary arrangements for same.

Thank you for your consideration of this matter.

Respectfully submitted,



Maurice L. Hudson
Assistant Corporation Counsel

Enc.

cc: Mr. Andrew Pinckney (by regular mail)
#07-A-6416
72 Lock 11 Lane, Box 180
Comstock, NY 12821-0180

³ For the Court's convenience, a copy of plaintiff's June 9, 2008, letter to Judge McMahon is attached hereto.